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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re G.W., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Petitioner and Respondent,

v.

R. W.,

Defendant and Appellant.

A148774

(Alameda County
Super. Ct. No. OJ13021042)

R. W. (Mother) appeals an order terminating her parental rights to her daughter, G.W. (Minor) and setting a permanent plan of adoption.¹ Mother's sole contention on appeal is that the juvenile court prejudicially erred in failing to find that the beneficial parental relationship exception to termination of parental rights applied. We shall affirm the order.

I. BACKGROUND

A. June 2013: Minor is Removed from Mother's Custody

Father assaulted Mother in 2012 while she was pregnant with Minor, and Mother obtained a restraining order. The following spring, when Minor was about seven months old, Father hit Mother in the head and eye while she was holding Minor, and then took

¹ Minor's father (Father) is not a party to this appeal.

Minor from Mother, and threw her to the floor, causing bruising to Minor's skull. Mother reported the incident to the police the same day. She reportedly appeared to be intoxicated at the time, although she said she had only one beer. Minor was taken into protective custody, and placed in foster care. On June 3, the Alameda County Social Services Agency (Agency) filed a petition on Minor's behalf, alleging physical abuse and failure to protect her.

According to the Agency's June 18 jurisdiction report, Mother had a lengthy prior child welfare history. Two older sons had been removed from her care and adopted by their adult sister. Mother's other three children reportedly lived with their respective fathers. The Father of her two oldest children said she was a good mother, however, and that she had a very close relationship with their children. The woman who adopted her sons also said Mother retained an active and appropriate role in their lives.

Mother was desperate to have Minor back in her care, the Agency reported, and promised to do whatever it took to make that happen. During a supervised visit the following week, Mother reportedly was very loving and appropriate with Minor, who appeared comfortable and bonded with her, smiling when Mother picked her up. Mother began attending a domestic violence program and individual therapy sessions, obtained a criminal protective stay away order against Father, said she would divorce him, and told the police she would press charges. She also arranged for her uncle to live with her to help ensure Minor's safety if Minor was restored to her care.

In its July 2 disposition report, the Agency recommended adjudging Minor a dependent of the court, placing her with Mother, and providing family maintenance services. At the jurisdiction hearing on August 7, the juvenile court concurred, adopting the Agency's recommendations and ordering that Minor be returned to Mother's home, to reside there under Agency supervision.

B. August 2013 through May 2015: Mother Has Custody of Minor Under Agency Supervision

From August 2013 until May 2015, Mother received family maintenance services and consistently met many of her case plan goals. Mother and Minor had no further

contact with Father. Mother avoided becoming a victim of further domestic abuse herself, allowed no physical abuse of Minor, enrolled Minor in a suitable daycare, provided her a safe home environment, and was attentive to her needs, showing her love and caring. The child welfare workers reported that Minor appeared very bonded (and well-bonded) to Mother, seemed comfortable in Mother's arms and sought Mother out for attention and comfort.

Mother attended her court-ordered individual therapy sessions only inconsistently, however, impeding her progress in addressing the past mental health issues that had led her to enter violent relationships and had made it difficult for her to manage her emotions. In June 2014, Mother reported she was struggling with alcohol, and the juvenile court modified her case plan, requiring her to attend two 12-step meetings weekly. The same month, Mother reported she had been arrested for assault with a deadly weapon for backing her car into the car of the father of another of her children. Although Mother claimed she actually had been the victim in that incident, she told the juvenile court the case would be pled as a misdemeanor, and she would be required to take anger management classes.²

In its December 2014 status review report, the Agency advised that Mother was noncompliant with her case plan in several other respects. She had missed a recent medical appointment for Minor, had not produced confirmation of her attendance at 12-step meetings, had not completed the medical evaluation her therapist recommended to assist in treating her depression, and had attended only two individual therapy sessions in the past five months. Although the Agency nonetheless recommended dismissing the dependency action given Mother's progress in other areas, Minor's appointed counsel disagreed and the court ultimately continued the action to May 2015 to allow further evaluation of Mother's progress.

In the ensuing review period, Mother increased her attendance at her individual therapy sessions, appearing more motivated during them, provided confirmation of her

² This charge reportedly was dismissed after Mother served three days in jail.

attendance at 12-step meetings, completed the recommended medical evaluation, received a prescription for psychotropic medications, and obtained a week's worth of medication. Although Mother initially told her therapist she did not want to use the medication because it affected her weight, eventually she did refill the prescription at her child welfare worker's urging.

Mother experienced challenges with her housing situation in this review period, reporting she would have to move in June. She also called the police several times, first, to assist with a violent ex-boyfriend and, later, apparently, to have an unwanted male guest removed. Mother did not report these incidents to the Agency, but her child welfare worker investigated after observing bruising on Mother's chin and neck and other signs of injury. The Agency ultimately concluded Mother did not report the police calls because she feared losing custody of Minor, whom she loved, and it commended Mother for keeping Minor safe in both instances. The Agency recommended continuing family maintenance services, and the juvenile court concurred. It set another status review hearing for July, to receive an update on Mother's housing issues, and directed Mother to complete two drug tests.

C. May 2015: Minor is Removed a Second Time

On May 21, 2015, when Minor was about two and a half years old, the Agency filed a supplemental petition under section 387 of the Welfare and Institutions Code,³ advising that Minor again had been placed in protective custody. According to reports the Agency subsequently filed in support of that petition, Mother had not consistently availed herself of the mental health services she needed, had a relapse in her sobriety, and was hospitalized to stabilize her medications after experiencing paranoid hallucinations. In this period, Mother also was evicted from her home for failure to pay rent.

The events culminating in the supplemental petition commenced on May 18, when Mother left two voicemail messages for the child welfare worker, saying she was at the

³ All other references to code sections below are to the Welfare and Institutions Code.

hospital and needed help. Mother said, “We are not okay, come pick us up,” and “I can’t do this anymore, the baby is soaking wet.” When the child welfare worker called the hospital the following day, she learned that Mother and Minor had arrived there by ambulance, both crying, after Mother panicked while they were at a pizza parlor, and that Mother later tested positive for cocaine, opiates, and benzodiazepine.

Mother attended the status review hearing in court later the same day (May 19). The child welfare worker thought she appeared paranoid, agitated and fearful. Mother said people were following her and wanted to kill her, and began crying, shaking, and complaining of chest pains. The child welfare worker thought Mother was under the influence of drugs, having a mental health episode, or both. She asked Mother about her ability to care for Minor, and Mother replied that Minor was safe with her daycare provider.

On receiving this information, the child welfare worker obtained a warrant to take Minor into protective custody, and went to pick her up. The daycare provider confirmed Mother had asked her the day before to keep Minor overnight, but said she had not left any supplies for Minor (e.g., diapers or clothes), had not come to pick her up the next morning as agreed, and still had not called by early evening (5 p.m.). At the daycare provider’s suggestion, the child welfare worker called the John George Psychiatric Pavilion, and confirmed Mother was there, but she could not obtain other information. Concluding there was no one to care for Minor, the child welfare worker took her into custody. Minor was placed in foster care the next day. At a hearing on May 22, the court ordered Minor detained, and directed that family reunification services be provided.

D. June 2015 through May 2016: Family Reunification Services Fail and Mother’s Parental Rights Are Terminated

After losing custody of Minor again, Mother was unable to address her own substance abuse and mental health issues, problems that previously had resulted in termination of her parental rights to two older children. In June 2015, during an intake assessment for a substance abuse program, Mother acknowledged she had been abusing cocaine for the past year and alcohol for the past two years. According to the jurisdiction

and disposition report the Agency filed the same month, Mother said she had stopped seeing her therapist. Mental health providers reported she had not followed through on referrals to secure monthly evaluation of her psychotropic medication as recommended, and had not consistently taken the medication as prescribed. Mother now homeless, was living with friends, and waiting to receive short-term housing. Although she had a section 8 voucher, and the Agency provided her a letter in July to assist her in obtaining housing, it appears she never did secure housing while her case was before the juvenile court.

Although she received reunification services, Mother made no progress in other critical areas during this review period. In October, for example, she tested positive three times for cocaine and benzodiazepine. After the Agency assessed the severity of her addiction issues, it determined she should attend substance abuse classes three times per week for 36 weeks, with random drug tests twice weekly. Mother completed the intake process and attended two group sessions, but then never returned and did not comply with random drug testing. Although she also claimed to be attending 12-step meetings, she did not submit signature cards or other documentation confirming her attendance.

Mother similarly made no progress in obtaining mental health treatment. Her therapist reported she attended therapy sessions inconsistently. She visited a mental health clinic only once, early in the six-month review period after the Agency filed the supplemental petition, to obtain a single week's worth of her prescribed medication, and missed three appointments with a provider offering ongoing mental health treatment. Rather than seeking treatment that would allow her to provide a safe and stable home for Minor, Mother instead denied she had mental health issues, telling the child welfare worker that her hospitalization in May 2015 had been related to high blood pressure and diabetes, and that she did not need psychotropic medications.

In light of these facts, in its six-month status review report, filed on December 7, 2015, the Agency recommended terminating Mother's reunification services and setting a hearing under section 366.26 to determine a permanent plan for Minor's adoption. At a

contested hearing on January 20, 2016, the juvenile court agreed, adopting the Agency's recommendation, terminating services, and setting a section 366.26 hearing for May 10.

The Agency filed a section 366.26 report on April 25, 2015, recommending termination Mother's parental rights, to allow for Minor's adoption. It reported that Minor was adoptable, her current caregivers wanted to adopt her, Mother still had no stable place to live, and Mother still had not adequately addressed the substance abuse and mental health issues that led to her most recent loss of custody. Again, the juvenile court concurred. After finding by clear and convincing evidence that Minor was adoptable, the court terminated Mother's parental rights, ruled that adoption was Minor's permanent plan, and referred Minor for adoptive placement.

II. DISCUSSION

Mother contends the juvenile court prejudicially erred in terminating her parental rights because she presented evidence establishing that the beneficial parental relationship exception applied. We do not agree that the court erred.

A. Statutory Framework

"Section 366.26 establishes a detailed procedure for terminating parental rights. Subdivision (c)(1) states that a prior order . . . terminating reunification services 'shall constitute a sufficient basis for termination of parental rights.' If the court determines under a 'clear and convincing standard' that it is 'likely the child will be adopted,' the court 'shall terminate parental rights and order the child placed for adoption.' (§ 366.26, subd. (c)(1).) The goal is to provide 'stable, permanent homes' for children who are dependents of the juvenile court, and the first choice to achieve that goal is adoption. (§ 366.26, subd. (b); *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348 (*Jasmine D.*).)

"This procedure recognizes that '[b]y the time of a section 366.26 hearing, the parent's interest in reunification is no longer an issue and the child's interest in a stable and permanent placement is paramount.' (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1348.) Thus, to terminate parental rights under section 366.26, the court 'need only make two findings: (1) that there is clear and convincing evidence that the minor will be adopted; and (2) that there has been a previous determination that reunification services shall be

terminated.’ (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250.) Under these circumstances, ‘the court shall terminate parental rights’ unless certain exceptions apply. (§ 366.26, subd. (c)(1).)” (*In re Logan B.* (2016) 3 Cal.App.5th 1000, 1010 (*Logan B.*).

Mother here does not dispute that Minor is adoptable or that her reunification services were terminated. Instead she relies on the exception set forth in section 366.26, subdivision (c)(1)(B)(i). Together with the introductory language in subdivision (c)(1)(B), that subdivision states that an exception to termination of parental rights applies when: “(B) [t]he court finds a compelling reason for determining that termination would be detrimental to the child [because]: [¶] (i) [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26.)

“ ‘ “[B]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” ’ [Citation.]” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165-1166.) “[A] parent [may not] ‘derail’ adoption simply by showing that the child would derive some benefit from continuing the parental relationship through visits. [Citation.]” (*Logan B., supra*, 3 Cal.App.5th at p. 1012.) It also will not suffice for a parent to show “frequent and loving contact, an emotional bond with the child or pleasant visits.” (*In re C.B.* (2010) 190 Cal.App.4th 102, 126.)

“The ‘benefit’ necessary to trigger this exception has been judicially construed to mean, ‘the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ [Citations.]” (*In re J.C.* (2014) 226 Cal.App.4th 503,

528-529.) Meeting this standard requires evidence “(beyond [the parent’s] stated belief) that termination of the parent-child relationship would be detrimental to [the child] or that the relationship conferred benefits to [the child] more significant than the permanency and stability offered by adoption.” (*In re K.P.* (2012) 203 Cal.App.4th 614, 622-623.)

B. Standard of Review

“Appellate courts have adopted differing standards of review for the parental relationship exception determination. Many courts review for substantial evidence. [Citations.] Other courts have applied an abuse of discretion standard of review. [Citations.] More recently, courts have adopted both the substantial evidence and abuse of discretion standards of review. [Citations.] In evaluating the juvenile court’s determination as to the factual issue of the existence of a beneficial parental relationship, these courts review for substantial evidence. [Citations.] But whether termination of the parental relationship would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. [Citations.]” (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1300-1301.)

As courts have acknowledged, the practical differences between the standards “in this context are not significant.” (*In re N.L.* (2015) 236 Cal.App.4th 1460, 1466.) “ ‘[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only “ ‘if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.’ ” ’ ” (*Jasmine D., supra*, 78 Cal.App.4th at p. 1351.)

We need not decide which standard to apply here, as Mother has failed to show error under any of those deferential standards.

C. Analysis

1. Visitation

The first prong of the beneficial parental relationship exception is regular visitation. Beginning in June 2015, after Minor was removed from her custody the

second time, Mother was granted supervised visitation one day a week for one hour. In January 2016, her supervised visitation was increased to two hours once a week. The parties basically agree that Mother was consistent overall in attending her supervised visits with Minor between June 2015 and January 2016, although she apparently missed, canceled, or rescheduled four visits and may have been up to 10 minutes late in many instances. Between January and May 2016, they agree Mother missed another handful of visits, although they disagree on the details,⁴ and the Agency contends, without contradiction from Mother, that she continued to arrive late for the visits.

The juvenile court did not specifically rule on whether Mother's visitation qualified as "regular" for purposes of the beneficial parental relationship exception, and we need not decide the question, because the order terminating Mother's parental rights was proper even if her visitation is deemed to have been regular.

2. *Beneficial Relationship*

The second prong of the exception required evidence that Minor "would benefit from continuing the [parent-child] relationship." (§ 366.26, subd. (c)(1)(B)(i).) According to well-established case-law, this meant Mother had to show either that her relationship with Minor promoted Minor's well-being "to such a degree as to outweigh the well-being [she] would gain in a permanent home with new, adoptive parents," or that Minor "would be greatly harmed" if their relationship were severed. (*In re J.C.*, *supra*, 226 Cal.App.4th at pp. 528-529.)

In an effort to meet this requirement, Mother notes that both the Agency and the juvenile court agreed she and Minor shared a strong bond in June 2015, when Minor, then two and a half, was removed from her custody. It is true the Agency, in its jurisdiction and disposition report, recommended providing Mother family reunification services to avoid further trauma for Minor, observing that Minor appeared to be "closely connected" and "very bonded" with Mother at the time. The juvenile court approved

⁴ Mother contends she was forced to cancel several visits in a specific period because Minor's transportation provider was on vacation, while the Agency contends Mother tended to canceled every third visit "on short notice."

family reunification services based on that report. And, as Mother also notes, after she testified at the section 366.26 hearing a year later, the juvenile court judge found it “clear”—remarking “[t]here’s no question”—that Mother does love Minor.

Mother presented no evidence, other than her own testimony, however, that Minor remained strongly bonded to her a year later, in May 2016, or that termination of their relationship at that point would be detrimental to Minor. Unlike other cases in which a beneficial parental relationship has been found, including *In re S.B.* (2008) 164 Cal.App.4th 289, 296, which Mother cites, Mother did not offer independent evidence, such as the testimony of a psychological expert or a bonding study. (See also, e.g., *In re Amber M.* (2002) 103 Cal.App.4th 681, 690-691 [parent presented the testimony of a psychologist, therapists, and a court-appointed special advocate].) Rather, she relies solely on her own testimony that she and Minor shared pleasant activities during their visits in the preceding year, walking together, holding hands, doing puzzles, painting pictures, doing their nails, and eating together. Minor was quiet during their visits, Mother observed, generally only beginning to open up and talk as the end of the visit approached. When it was time for Minor to get into the car to leave, Mother testified, Minor kicked and screamed, saying “I don’t want to get in” and “Mommy, you get in.”

Mother offers no corroboration of these incidents, however, such as testimony from Minor’s transportation provider or from those who supervised the visits. (See, e.g., *In re J.C.*, *supra*, 226 Cal.App.4th at pp. 519, 533-534 [a mother’s “self-serving” declaration that her child often said she wanted to go home with her after their visits was insufficient to establish the second prong of the beneficial parental relationship exception, without other evidence].) Mother does not deny that Minor sometimes cried at the start of their visits, when her caregivers left her with Mother. There was also evidence that minor resisted attending visits with Mother for six months, after school began in September 2015, when one of her older half-siblings stopped joining in the visits. During that period, Minor reportedly would cry as her foster parents tried to put her in the car seat and once hid in the laundry room when the social worker came to pick her up.

The Agency's reports indicated Minor was adjusting well to living with her foster parents, and was noticeably more verbal in their company. By the time of the section 366.26 hearing, Minor had lived with her foster parents for a year. The Agency reported she seemed comfortable with them, was very much part of the family, had a strong attachment to her foster siblings who were twins the same age as Minor, followed her foster mother around, and had begun a Head Start program, where she was doing well.

On this evidence, the juvenile court did not err in concluding Mother had not met her burden of proving a beneficial parental relationship. While Mother and Minor may have shared loving moments during their visits and a continuing emotional bond, Mother offered no independent evidence that termination of the parent-child relationship would be detrimental to Minor. Nor did she prove the benefits for Minor of continuing the parental relationship outweighed the benefits of permanence through adoption.

The Agency presented evidence that Minor was benefitting from her placement with prospective adoptive parents, who provided her a stable, suitable, and loving home. Although Mother clearly loved Minor, the juvenile court found she had made no progress toward overcoming the problems that led to the supplemental petition. She also had not demonstrated any likelihood that she would be able to take custody of Minor within any reasonable time or that alternative placements were preferable. On comparable evidence, appellate courts have rejected claims that a beneficial parental relationship existed, and we concur. (See, e.g., *In re Anthony B.* (2015) 239 Cal.App.4th 389, 397; *In re J.C.*, *supra*, 226 Cal.App.4th at pp. 533-534; *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 622-623.) This is not the extraordinary case where an adoption should have been foreclosed by the exception provided in section 366.26, subdivision (c)(1)(B)(i).

III. DISPOSITION

The order appealed from is affirmed.

Rivera, J.

We concur:

Reardon, Acting P.J.

Streeter, J.

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